

ESTTA Tracking number: **ESTTA652699**

Filing date: **01/28/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Metagenics, Inc.
Granted to Date of previous extension	03/04/2015
Address	25 Enterprise, Suite 200 Aliso Viejo, CA 92656 UNITED STATES
Attorney information	Dennis H. Cavanaugh D H Cavanaugh Associates 555 Fifth Avenue 17th Floor New York, NY 10017 UNITED STATES dhc@dhcavanaugh.net Phone:212-856-7210

### Applicant Information

Application No	86314066	Publication date	11/04/2014
Opposition Filing Date	01/28/2015	Opposition Period Ends	03/04/2015
Applicant	Yoli, LLC 4520 West 2100 South Suite 601 Salt Lake City, UT 84120 UNITED STATES		

### Goods/Services Affected by Opposition

Class 005. First Use: 2010/01/12 First Use In Commerce: 2010/01/12  
All goods and services in the class are opposed, namely: Nutritional proprietary ingredient blend sold as an integral component of dietary and nutritional supplements and dietary supplemental drinks and drink mixes

### Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1742667	Application Date	03/13/1990
Registration Date	12/29/1992	Foreign Priority Date	NONE
Word Mark	ENDURA		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1989/11/01 First Use In Commerce: 1989/11/01 nutritional support products for weightmanagement and muscle building; namely,vitamin and mineral supplements

U.S. Registration No.	1932421	Application Date	09/03/1991
Registration Date	11/07/1995	Foreign Priority Date	NONE

Word Mark	ENDURA
Design Mark	

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1991/06/20 First Use In Commerce: 1991/06/20 electrolyte and vitamin supplement lemon/lime drink mix

U.S. Registration No.	1983746	Application Date	03/20/1995
Registration Date	07/02/1996	Foreign Priority Date	NONE

Word Mark	ENDURA
Design Mark	
Description of Mark	NONE
Goods/Services	Class 021. First use: First Use: 1993/01/00 First Use In Commerce: 1993/01/00 sports water bottles, namely plastic containers for holding water and other beverages

U.S. Registration No.	2176358	Application Date	02/21/1997
Registration Date	07/28/1998	Foreign Priority Date	NONE

Word Mark	ENDURA
Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1989/11/00 First Use In Commerce: 1989/11/00 nutritional supplements

Attachments	74199862#TMSN.png( bytes ) ENDURAMIN Opposition.pdf(25220 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Dennis H. Cavanaugh/
Name	Dennis H. Cavanaugh
Date	01/28/2015

## NOTICE OF OPPOSITION

Pursuant to Trademark Rule 2.102, Metagenics, Inc., a Delaware corporation having an office and place of business at 25 Enterprise, Suite 200, Aliso Viejo, California 92656 (“Opposer”), believes that it is and will be damaged by registration of the shown in Serial Number 86/314,066 in International Class 5 and opposes the same. As grounds for the opposition it is alleged that:

1. The Applicant, Yoli, LLC (“Applicant”), is upon information and belief, a Nevada limited liability company with a place of business located at 4520 West 2100 South, Suite 601, Salt Lake City, Utah 84120.

2. On or about June 19, 2014, Applicant filed the above-referenced trademark application to register the mark ENDURAMIN for a “nutritional proprietary ingredient blend sold as an integral component of dietary and nutritional supplements and dietary supplemental drinks and drink mixes” in International Class 5, under Section 1A.

3. Opposer adopted and has been using the mark ENDURA in interstate commerce since at least as early as December 29, 1992, as a trademark to identify its nutritional and dietary supplements. Opposer continues to use the mark ENDURA to identify its nutritional and dietary supplements and such use has never been abandoned.

4. Opposer is the owner of the following registrations for the mark ENDURA on the Principal Register, which registrations are valid and subsisting and have never been abandoned:

- a. Registration No. 1,742,667, for ENDURA, issued December 29, 1992, for “nutritional support products for weight management and muscle building; namely, vitamin and mineral supplements” in Class 5;

- b. Registration No. 1,932,421, for ENDURA and Design, issued November 7, 1995, for “electrolyte and vitamin supplement lemon/lime drink mix” in Class 5;
- c. Registration No. 1,983,746, for ENDURA, issued July 2, 1996, for “sports water bottles, namely plastic containers for holding water and other beverages” in Class 21; and
- d. Registration No. 2,176,358, for ENDURA, issued July 28, 1998, for “nutritional supplements” in Class 5.

5. Applicant’s filing date of June 19, 2014 is subsequent to both Opposer’s date of first use of its ENDURA mark, November 1, 1989, and the date of its first registration therefor, December 29, 1992. Applicant’s claimed dates of first use of ENDURAMIN, January 12, 2010, are also subsequent to Opposer’s dates of first use and registration. Thus, priority is not at issue.

6. Applicant’s mark ENDURAMIN is confusingly similar in sight, sound and meaning, to Opposer’s ENDURA mark. Applicant’s mark is virtually identical to Opposer’s mark. Consequently, Applicant’s mark so closely resembles Opposer’s mark as to be likely to be confused with and mistaken for Applicant’s mark. As a result, there is a significant likelihood of confusion between Applicant’s mark and Opposer’s mark.

7. Applicant’s goods are identical and closely related to those of Opposer, thus increasing the likelihood of confusion that may result from registration and use of Applicant’s mark.

8. Opposer has invested substantial time, effort and money in using and promoting its ENDURA mark and the goods bearing it. Through such prior use, promotion and advertising,

Opposer has built up a valuable and protectable goodwill associated therewith. By virtue of Opposer's continuous, exclusive and widespread use of its ENDURA mark it has become well-known by the relevant purchasing public as a trademark of Opposer.

9. Registration of Applicant's mark is likely to cause the public to be confused, misled or deceived, and to falsely believe that Applicant's goods are affiliated, associated, approved, sponsored, licensed or authorized by Opposer or others authorized or licensed by Opposer to use the ENDURA mark. Persons familiar with Opposer's mark are likely to purchase Applicant's goods believing they are marketed by, affiliated with or endorsed by Opposer, when in fact they are not.

10. Registration of Applicant's mark is likely to cause harm and damage to Opposer and its mark by causing confusion, mistake and/or deception as to the respective rights of the parties and as to the source of the goods marketed and provided under the Applicant's mark, and by constituting a cloud on Opposer's prior established rights in its ENDURA mark. Such registration would give Applicant at least a prima facie right to use Applicant's mark, thereby causing continuing serious and irreparable harm to Opposer's rights in its mark, its business and to the goodwill of such business symbolized by Opposer's mark. Registration of Applicant's mark will also tend to reduce the distinctiveness, value and goodwill of Opposer's mark.

WHEREFORE, Opposer believes that it will be damaged by registration of the Applicant's mark in Class 5, Application Serial No. 86/314,066, and opposes registration thereof on the grounds set forth above. Opposer further prays that Application Serial No. 86/314,066 be rejected, and that registration of Applicant's mark therein sought for the goods specified therein in Class 5 be denied and refused.

Dated: New York, New York  
January 28, 2014

Respectfully submitted,

METAGENICS, INC.

/Dennis H. Cavanaugh/

By: \_\_\_\_\_

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Attorneys for Opposer

CERTIFICATE OF SERVICE

DENNIS H. CAVANAUGH, declares that:

1. I am counsel for the Opposer in the captioned action, and that on the execution date which appears below, a true copy of the foregoing was served on Applicant and Applicant's designated representative for correspondence, by causing the same to be placed in an official depository under the exclusive care and custody of the United States Postal Service, first class mail, postage prepaid, addressed as follows:

Yoli, LLC  
4520 West 2100 South, Suite 601  
Salt Lake City, Utah 84120

Xavier Morales, Esq.  
Law Office of Xavier Morales  
P.O. Box 6510  
San Antonio, Texas 78209

2. Pursuant to 28 U.S.C. Sect. 1746, I declare under penalty of perjury that all of the foregoing is true and correct.

Executed on January 28, 2014

/Dennis H. Cavanaugh/  
By \_\_\_\_\_  
Dennis H. Cavanaugh

CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8

I hereby certify that on January 28, 2014, this correspondence is being filed electronically with the U.S. Patent and Trademark Office.

/Dennis H. Cavanaugh/  
\_\_\_\_\_  
Dennis H. Cavanaugh